

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION

Jeremiah John Pudwill,)	ORDER ADOPTING REPORT AND RECOMMENDATION
)	
Plaintiff,)	
)	
vs.)	
)	
The United States Attorney, in and for the,)	Case No. 1:07-cv-058
Federal Government,)	
)	
Defendant.)	

Before the Court is plaintiff Jeremiah John Pudwill's petition for a writ of mandamus and application to proceed in forma pauperis filed on August 31, 2007. See Docket Nos. 1 and 2. The matters were referred to Magistrate Judge Charles S. Miller for the issuance of a Report and Recommendation. See N.D. Ct. R. 72.1(A)(3). On September 13, 2007, Judge Miller issued a Report and Recommendation wherein he recommended that Pudwill's application to proceed in forma pauperis be denied and his petition for a writ of mandamus be dismissed. Both parties were given ten (10) days to object to the Report and Recommendation. On September 26, 2007, Pudwill filed an objection to the Report and Recommendation. See Docket No. 4.

Pudwill contends that his conviction is unlawful and that his only remedy is through a writ of mandamus. "To ensure that mandamus remains an extraordinary remedy, petitioners must show that they lack adequate alternative means to obtain the relief they seek, and carry the burden of showing that their right to issuance of the writ is clear and indisputable." Mallard v. United States Dist. Court for S. Dist. of Iowa, 490 U.S. 296, 309 (1989) (internal citations omitted). Pudwill contends that the Court erred in dismissing the petition for a writ of mandamus because a petition for a writ of habeas corpus under 28 U.S.C. § 2255 does not provide the remedy that Pudwill seeks, specifically to compel documents from the Government that declare the status of Pudwill's right to bear arms. As Pudwill himself stated, 28 U.S.C. § 2255 is available to attack an illegal sentence. It is clear that the sole

purpose of Pudwill's petition for a writ of mandamus is to attack his sentence as being illegal. As such, Pudwill's proper remedy is through a petition for a writ of habeas corpus.

The Court has carefully reviewed the Report and Recommendation, relevant case law, and the entire record and finds the Report and Recommendation to be persuasive. The Court **ADOPTS** the Report and Recommendation (Docket No. 3) in its entirety and **DENIES** Pudwill's motion to proceed in forma pauperis (Docket No. 1) and his motion for writ of mandamus (Docket No. 2).

IT IS SO ORDERED.

Dated this 28th day of September, 2007.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief Judge
United States District Court